IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1974 of 1981

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

USMANBHAI MOHMADBHAI

Versus

HEIRS OF ISMAILBHAI NOORMOHMADAMINABIBI WD/O ISMAILBHAI

Appearance:

MR SN SHELAT for Petitioner No. 1-4

NOTICE SERVED for Respondent No. 1-1/4,4/A-4/C,4/F-5,7-8,12-14

UNSERVED-EXPIRED (N) for Respondent No. 2,9

..... for Respondent No. 3/A,4/E,6

NOTICE NOT RECD BACK for Respondent No. 3/B,11

NOTICE UNSERVED for Respondent No. 4/D,10

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 26/12/2002

ORAL JUDGEMENT

1. This is a revision application under section 115, CPC, which will now be governed by the amendment thereof introduced by the Civil Procedure Code (Amendment) Act, 1999.

2. When this case was taken up for final hearing today, learned counsel for the applicants- original appellants-defendant nos.2, 5, 6 and 7 stated that his clients have taken away the papers of this revision application long back and that he has no instructions in the matter.

3. Even apart from this, having examined the record of the case, it is found that the opponent no.14 had filed a suit for partition of the suit property by metes and bounds and to recover possession of his share etc. The trial court, after hearing the parties, had passed a preliminary decree. It appears that the same was not challenged in appeal. Thereafter the matter proceeded further and resulted in the trial court, after hearing the parties, delivering a judgement dated 12th June 1978, whereby the suit was disposed of and final decree was ordered to be drawn up in terms of the said judgement. The present applicant thereupon preferred a regular appeal under section 96, CPC, before the District Court, Surat being Regular Civil Appeal no.130/78. After hearing the parties, the lower appellate court dismissed the said appeal. Hence the present revision at the instance of the original appellants-plaintiffs.

4. It is plain and obvious that in view of the amendment to section 115, CPC, introduced by the aforesaid Amendment Act, this revision is not maintainable. Even otherwise, the trial court having passed a final decree in a partition suit, and a regular appeal under section 96, CPC, having been dismissed, a revision under section 115, CPC, is even otherwise not maintainable, since an appeal under section 100, CPC is the appropriate remedy. This revision is, therefore, dismissed. Rule is discharged with no order as to costs. Ad interim relief stands vacated.

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